

BILL NO. G-74-05-25

GENERAL ORDINANCE NO. G- 11-74.

AN ORDINANCE prohibiting the Distribution or exhibition
of Obscene Matter or Performances and Repealing
General Ordinance No. G-07-74, dated April 9, 1974.

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT
WAYNE, INDIANA:

SECTION 1. Obscene Matters and Performances

For the purpose of this Ordinance:

(a) "Matter" means any book, magazine, newspaper, or printed or
written material, or any picture, drawing, photograph, motion picture, or other
pictorial representation, or any statue or other figure, or any recording, transcrip-
tion, or mechanical, chemical or electrical reproduction or any other articles, equip-
ment, machines or materials.

(b) "Performance" means any play, motion picture, dance or other
exhibition or presentation, whether pictured, animated or live, performed before
an audience of one or more persons.

(c) Any matter or performance is obscene if: (i) the average person,
applying contemporary community standards, finds that the matter or performance
taken as a whole, appeals to the prurient interest, and (ii) the matter or performance
depicts or describes in a patently offensive way, sexual conduct, normal or per-
verted, actual or simulated, and (iii) the matter or performance taken as a whole,
lacks serious literary, artistic, political or scientific value.

(d) "Sexual conduct" means acts of masturbation, excretory functions,
lewd exhibition of the genitals, sadomasochistic abuse, homosexuality, lesbianism,
bestiality, sexual intercourse or physical contact with a person's clothed or un-
clothed genitals, pubic area, buttocks, or the breast or breasts of a female for
the purpose of sexual stimulation, gratification, or perversion.

(e) "Sadomasochistic abuse" means flagellation or torture by or upon
a person as an act of sexual stimulation or gratification.

(f) "Person" means any individual, partnership, firm, association,
corporation or other legal entity.

(g) "Distribute" means to transfer possession of, whether with or with-
out consideration.

(h) "Knowingly" means knowing or having good reason to know or
having such constructive knowledge as would constitute knowing, the character of
the matter or performance.

(i) "Owner" means any person who owns or has legal right to posses-
sion of any matter.

(j) "City" means City of Fort Wayne, Indiana.

SECTION 2. Every person who knowingly sends or causes to be sent, or brings or causes to be brought, into the City for sale or distribution, or in the City possesses, prepares, publishes or prints, with intent to distribute or to exhibit to another, or who offers to distribute, distributes, or exhibits to another any obscene matter is guilty of a misdemeanor.

SECTION 3. Every person who knowingly engages or participates in, manages, produces, sponsors, presents or exhibits any obscene performance is guilty of a misdemeanor.

SECTION 4. Defenses. It shall be an affirmative defense to a prosecution under this Ordinance for the defendant to show:

(a) That the act was done for legitimate scientific or educational purposes.

SECTION 5. Where the subject matter is offered for distribution to the public as stock in trade of a lawful business or activity, or as in the case of films is exhibited at a commercial theater showing regularly scheduled performances to the general public, no persons shall be arrested for a violation of any of the provisions of this Ordinance unless the arresting officer shall have first obtained an arrest warrant, and no property shall be seized as evidence unless a search warrant shall have first been obtained pursuant to the provisions of this Ordinance; Provided, however, that the quantity of matter seized shall encompass no more than is reasonable and necessary for the purpose of obtaining evidence.

SECTION 6. At any time after seizure, or the obtaining of evidence by purchase, and prior to arrest, the City, defendant, owner, or other party in interest of any matter seized or purchased, may apply for and obtain a prompt adversary hearing for the purpose of obtaining a preliminary determination of obscenity. Said hearing for preliminary determination of obscenity shall be held promptly and without the intervention of a jury, said restriction applying only to the preliminary determination and in no way affecting the defendant's right to a jury trial. If evidence has been obtained by purchase, the court shall direct the clerk of the court to issue notice to the defendant informing the person of the availability of a prompt adversary hearing prior to the issuance of a warrant of arrest. If the court determines at said hearing that the material is obscene, the matter shall be held as evidence and a warrant of arrest may be issued for the arrest of the defendant. Provided, further, if the defendant, owner or other party in interest of any matter seized or purchased shall not apply for a prompt adversary hearing within five (5) days after the seizure occurs or within seven (7) days after notice is issued by the court, an arrest warrant may be issued for the arrest of the defendant. In the case of films or motion pictures, at any time after seizure and prior to trial or any adversary hearing for the purpose of obtaining a preliminary determination of obscenity, the defendant or owner of any matter seized may apply for and, upon a showing that other copies of the film or motion picture are not available to be exhibited, the court shall order that the applicant be permitted to copy the film or picture, at his own expense, so that showing can be continued pending a judicial determination of obscenity in an adversary hearing.

SECTION 7. Any person who violates any of the provisions of this Ordinance shall be guilty of a misdemeanor, and shall upon conviction, be fined in any amount not to exceed One Thousand Dollars (\$1,000.00) and, may be imprisoned for any period not to exceed six (6) months.


SECTION 8. This Ordinance repeals General Ordinance No. G-07-74, dated April 9, 1974.

SECTION 9. If any provision or clause of this Ordinance, or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this Ordinance, and to this end the provisions of each section are declared to be severable.

SECTION 10. This Ordinance shall be in full force and effect from and after its passage, approval by the Mayor and legal publication thereof.


Councilman

Approved as to form and legality
this 14 day of May, 1974.


John H. Logan, Attorney for
Common Council

Read the first time in full and on motion by _____, seconded by _____, and duly adopted, read the second time by title and referred to the Committee on _____ (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Chambers, City-County Building, Fort Wayne, Indiana, on _____, the _____ day of _____, 197_____, at _____ o'clock P.M., E.S.T.

Date: _____

CITY CLERK

Read the third time in full and on motion by Nuckols, seconded by V. Schmidt, and duly adopted, placed on its passage. Passed (~~LOST~~) by the following vote:

	AYES <u>9</u>	NAYS _____	ABSTAINED _____	ABSENT _____ to-wit:
BURNS	<u>✓</u>	_____	_____	_____
HINGA	<u>✓</u>	_____	_____	_____
KRAUS	<u>✓</u>	_____	_____	_____
MOSES	<u>✓</u>	_____	_____	_____
NUCKOLS	<u>✓</u>	_____	_____	_____
SCHMIDT, D.	<u>✓</u>	_____	_____	_____
SCHMIDT, V.	<u>✓</u>	_____	_____	_____
STIER	<u>✓</u>	_____	_____	_____
TALARICO	<u>✓</u>	_____	_____	_____

DATE: 5-14-74

CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (Zoning Map) (General) (~~Annexation~~) (~~Special~~) (~~Appropriation~~) Ordinance (Resolution) No. 2-11-74 on the 14th day of May, 1974.

Charles W. Westerman
Melvin G. Donick, Dep. Clerk
CITY CLERK

ATTEST: (SEAL)

Samuel J. Talarico
PRESIDENT

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 15th day of May, 1974, at the hour of 8:30 o'clock A. M., E.S.T.

Charles W. Westerman
Melvin G. Donick, Dep. Clerk
CITY CLERK

Approved and signed by me this 15th day of May, 1974, at the hour of 11:30 o'clock P. M., E.S.T.

John H. Lubinski
MAYOR

SUSPENSION OF RULES

BILL NO. 12-74-05-25

Councilman Nuckols, moved to suspend the rules on passage of BILL NO. 12-74-05-25, at this meeting of May 14, 1974, of the Common Council of the City of Fort Wayne, Indiana. Said motion was seconded by Councilman V. Schmidt, and duly passed by unanimous vote of all legally elected members of the said Common Council.

The above BILL and General ORDINANCE was accordingly placed on its passage.

DATE: 5-14-74

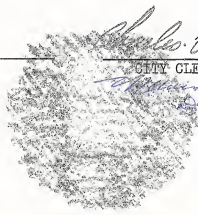
Samuel J. Talarico Charles W. Westerman
PRESIDING OFFICER CITY CLERK
William G. Shuck
Dep. Clerk

	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>	<u>TO-WIT</u>
<u>BURNS</u>	<u>✓</u>	_____	_____	_____	_____
<u>HINGA</u>	<u>✓</u>	_____	_____	_____	_____
<u>KRAUS</u>	<u>✓</u>	_____	_____	_____	_____
<u>Moss</u>	<u>✓</u>	_____	_____	_____	_____
<u>NUCKOLS</u>	<u>✓</u>	_____	_____	_____	_____
<u>Nuckols</u>	<u>✓</u>	_____	_____	_____	_____
<u>MOSES</u>	<u>✓</u>	_____	_____	_____	_____
<u>D. SCHMIDT</u>	<u>✓</u>	_____	_____	_____	_____
<u>V. SCHMIDT</u>	<u>✓</u>	_____	_____	_____	_____
<u>STIER</u>	<u>✓</u>	_____	_____	_____	_____
<u>TALARICO</u>	<u>✓</u>	_____	_____	_____	_____

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as General Ordinance No- 12-11-74

ATTEST: (SEAL)

DATE: 5-14-74
Charles W. Westerman
CITY CLERK
William G. Shuck
Dep. Clerk





CITY OF FORT WAYNE

FORT WAYNE, INDIANA

CHARLES W. WESTERMAN
CITY CLERK

May 16, 1974

Miss Helen Libbing
Fort Wayne Newspapers, Inc.
600 West Main Street
Fort Wayne, Indiana 46802

Dear Miss Libbing:

Please give the attached full coverage on the dates of May 18 and May 25, 1974, in both the News Sentinel and Journal Gazette.

RE: Legal Notice for Common Council
of Fort Wayne, Indiana:
General Ordinance No. G-10-74
Zoning Ordinance No. Z-08-74
General Ordinance No. G-11-74

Please send us six (6) copies of the Publisher's Affidavit.

Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Charles W. Westerman".

Charles W. Westerman
City Clerk

CWW/ne
ENCL: 3

Pursuant to the provision and penalties of Ch. 89, Acts 1967,

I hereby certify that the foregoing account is just and correct, that the amount claimed is legally due, after allowing all just credits, and that no part of the same has been paid.

Date May 28, 1974

Arvilla DeWald
CLERK

Notice is hereby given that on the 14th day of May, 1974, the Common Council of the City of Fort Wayne, Indiana, in a Regular Session did pass the following Bill No. G-74-65-25, G-11-74 General Ordinance, to-wit: BILL NO. G-74-65-25

GENERAL ORDINANCE NO. G-11-74 AN ORDINANCE prohibiting the Distribution or exhibition of Obscene Matter or Performances and Repealing General Ordinance No. G-67-74, dated April 9, 1974. BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. Obscene Matters and Performances For the purpose of this Ordinance:

(a) "Matter" means any book, magazine, newspaper, or printed or written material, or any picture, drawing, photograph, motion picture, or other pictorial representation, or any statue or other figure, or any recording, transcription, or mechanical, chemical or electrical reproduction or any other articles, equipment, machines or materials.

(b) "Performance" means any play, motion picture, dance or other exhibition or presentation, whether pictures, animated or live, performed before an audience of one or more persons.

(c) Any matter or performance is obscene if: (i) the average person, applying contemporary community standards, finds that the matter or performance taken as a whole, appeals to the prurient interest, and (ii) the matter or performance depicts or describes in a patently offensive way, sexual conduct, normal or perverted, actual or simulated, and (iii) the matter or performance taken as a whole, lacks serious literary, artistic, political or scientific value.

(d) "Sexual conduct" means acts of masturbation, excretory functions, lewd exhibition of the genitals, sodomosexual abuse, homosexuality, lesbianism, bestiality, sexual intercourse or physical contact with a person's clothed or unclothed genitals, public area, buttocks, or the breast or breasts of a female for the purpose of sexual stimulation, gratification or perversion.

(e) "Sodomosexual abuse" means flagellation or torture by or upon a person as an act of sexual stimulation or gratification.

(f) "Person" means any individual, partnership, firm, association, corporation or other legal entity.

(g) "Distribute" means to transfer possession of, whether with or without consideration.

(h) "Knowingly" means knowing or having good reason to know or having such constructive knowledge as would constitute knowing, the character of the matter or performance.

(i) "Owner" means any person who owns or has legal right to possession of any matter.

(j) "City" means City of Fort Wayne, Indiana.

SECTION 2. Every person who knowingly sends or causes to be sent or brings or causes to be brought, into the City for sale of distribution or in the City possesses, prepares, publishes or prints, with intent to distribute or to exhibit to another, or who offers to distribute, distributes, or exhibits to another any obscene matter is guilty of a misdemeanor.

SECTION 3. Every person who knowingly engages or participates in, manages, produces, sponsors, presents or exhibits any obscene performance is guilty of a misdemeanor.

SECTION 4. Defenses. It shall be an affirmative defense to a prosecution under this Ordinance for the defendant to show: (a) That the act was done for legitimate scientific or educational purposes.

SECTION 5. Where the subject matter is offered for distribution to the public as stock in trade of a lawful business or activity, or as in the case of films is exhibited at a commercial theater showing regularly scheduled performances to the general public, no persons shall be arrested for a violation of any of the provisions of this Ordinance unless the arresting officer shall have first obtained an arrest warrant, and no property shall be seized as evidence unless a search warrant shall have first been obtained pursuant to the provisions of this Ordinance. Provided, however, that the quantity of matter seized shall encompass no more than is reasonable and necessary for the purpose of obtaining evidence.

SECTION 6. At any time after seizure, or

the obtaining of evidence by purchase, and prior to arrest, the City, defendant, owner, or other party in interest of any matter seized or purchased, may apply for and obtain a prompt adversary hearing for the purpose of obtaining a preliminary determination of obscenity. Said hearing for preliminary determination of obscenity shall be held promptly and without the intervention of a jury, said restriction applying only to the preliminary determination and in no way affecting the defendant's right to a jury trial. If evidence has been obtained by purchase, the court shall direct the clerk of the court to issue notice to the defendant informing the person of the availability of a prompt adversary hearing prior to the issuance of a warrant of arrest. If the court determines at said hearing that the material is obscene, the matter shall be held as evidence and a warrant of arrest may be issued for the arrest of the defendant. Provided, further, if the defendant, owner or other party in interest of any matter seized or purchased shall not apply for a prompt adversary hearing within five (5) days after notice is issued by the court, an arrest warrant may be issued for the arrest of the defendant. In the case of films or motion pictures of any time after seizure and prior to trial or any adversary hearing for the purpose of obtaining a preliminary determination of obscenity, the defendant or owner of any matter seized may apply for and, upon a showing that other copies of the film or motion picture are not available to be exhibited, the court shall order that the applicant be permitted to copy the film or picture, at his own expense, so that showing can be continued pending a judicial determination of obscenity in an adversary hearing.

SECTION 7. Any person who violates any of the provisions of this Ordinance shall be

PUBLISHER'S AFFIDAVIT

State of Indiana
ALLEN County } ss:

Personally appeared before me, a notary public in and for said county and state, the undersigned ARVILLA DEWALD who, being duly sworn, says that she is CLERK of the

JOURNAL-GAZETTE

a DAILY newspaper of general circulation printed and published

in the English language in the city of FORT WAYNE, INDIANA

in state and county aforesaid, and that the printed matter attached hereto is a true copy,

which was duly published in said paper for time, the dates of publication being as follows:

May 18, 1974
May 23, 1974

Arvilla DeWald

Subscribed and sworn to before me this day of May 1974

Edith Stapleton

My commission expires March 11, 1978 Notary Public

(f) "Person" means any individual, partnership, firm, association, corporation or other legal entity.

(g) "Distribute" means to transfer possession of, whether with or without consid-

(h) "Knowingly" means knowing or having good reason to know or having such constructive knowledge as would constitute knowing, the character of the matter or performance.

(1) "Owner" means any person who owns or has legal right to possession of any matter.

(1) "City" means City of Fort Wayne, Indiana.

SECTION 2. Every person who knowingly sends or causes to be sent, or brings or causes to be brought, into the City for sale or distribution, or in the City possesses, prepares, publishes or prints, with intent to distribute or to exhibit to another, or who offers to distribute, distributes, or exhibits to another any obscene matter is guilty of a misdemeanor.

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(a) That the act was done for legitimate scientific or educational purposes.

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the obtaining of evidence by purchase, or

[illegible]

SECTION 7. Any person who violates any of the provisions of this Ordinance shall be guilty of a misdemeanor, and shall upon conviction, be fined in any amount not to exceed One Thousand Dollars (\$1,000), and, may be imprisoned for any period not to exceed six (6) months.

SECTION 8. This Ordinance repeals General Ordinance No. G-07-74, dated April 1974.

SECTION 9. If any provision or clause of this Ordinance, or its application to a person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this Ordinance, and to this end the provisions of each section are declared to be severable.

SECTION 10. This Ordinance shall be in full force and effect from and after its passage, approval by the Mayor and legal publication thereof.

JOHN NUCKOLS, Councilman
Read the third time in full and on motion
by Nuckols, seconded by V. Schmidt, it
duly adopted, placed on its passage
PASSED by the following vote:

Ayes: Nine.
Burns, Hinga, Kraus, Moses, Nuckols,
Schmidt, V. Schmidt, Stier, Talarico.

Nays: None.
Date: 5-14-74.

CHARLES W. WESTERMAN, City Clerk
MELVIN G. HONECK, Deputy Clerk
Passed and adopted by the Common
Council of the City of Fort Wayne, Indiana
as General Ordinance No. G-11-74 on
14th day of May, 1974.

ATTEST: _____ (SE.
Charles W. Westerman, City Clerk

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 15th day of May, 1974, at the hour of 10:00 o'clock A.M. EST

CHARLES W. WESTERMAN, City Clerk
-MELVIN G. HONECK, Deputy Clerk
Approved and signed by me this 15th day
of May, 1974, at the hour of 11:30 o'clock
A.M., E.S.T.

I, Charles W. Westerman, Clerk of the City of Fort Wayne, Indiana, do hereby certify that the above and foregoing is a true and complete copy of General Ordinance No. G-11-74 passed by the Common Council on the 14th day of May, 1974, that said Ordinance was duly signed and approved by the Mayor on the 15th day of May, 1974 and now remains on file and record in my office.

WITNESS my hand, and the official seal of the City of Fort Wayne, Indiana, 15th day of May, 1974.

CHARLES W. WILSTERMAN
City Clerk
MELVIN G. HONEC
Deputy Clerk

Common Council-City of Ft. Wayne
(Governmental Unit)

To JOURNAL-GAZETTE Dr.

Allen County, Ind.

FORT WAYNE, INDIANA

PUBLISHER'S CLAIM

LINE COUNT

Display Matter (Must not exceed two actual lines, neither of which shall total more than four solid lines of the type in which the body of the advertisement is set) — number of equivalent lines

Head number of lines

Body number of lines

Tail number of lines

Total number of lines in notice

-

212

4

216

COMPUTATION OF CHARGES

216 lines, columns wide equals equivalent lines at 216 cents per line \$62.21

Additional charge for notices containing rule or tabular work (50 per cent of above amount)

Charge for extra proofs of publication (50 cents for each proof in excess of two)

(4)

2.00

TOTAL AMOUNT OF CLAIM

\$64.21

DATA FOR COMPUTING COST

Width of single column 11 ems

Size of type 5 1/2 point

Number of insertions 2

Size of quad upon which type is cast 5 1/2

Pursuant to the provision and penalties of Ch. 89, Acts 1967,

I hereby certify that the foregoing account is just and correct, that the amount claimed is legally due, after allowing all just credits, and that no part of the same has been paid.

Date May 28, 1974

Title ARVILLA DEWALD CLERK

PUBLISHER'S AFFIDAVIT

State of Indiana } ss:
ALLEN County

Personally appeared before me, a notary public in and for said county and state, the undersigned ARVILLA DEWALD who, being duly sworn, says that she is CLERK of the

JOURNAL-GAZETTE

a DAILY newspaper of general circulation printed and published

in the English language in the city of FORT WAYNE, INDIANA

in state and county aforesaid, and that the printed matter attached hereto is a true copy, which was duly published in said paper for time, the dates of publication being as follows:

May 18, 1974

May 25, 1974

Subscribed and sworn to before me this 28th day of May 1974

Edith Stapleton Notary Public

My commission expires March 11, 1978

Notice is hereby given that on the 14th day of May, 1974, the Common Council of the City of Fort Wayne, Indiana, in a Regular Session did pass the following Bill No. G-74-25, G-11-74 General Ordinance, to-wit:

BILL NO. G-74-25
AN ORDINANCE prohibiting the Dis-
continued performance to the general pub-
lic, no persons shall be arrested for a viola-
tion of any of the provisions of this Ordi-
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by purchase, the court shall direct the
clerk of the court to issue notice to the de-
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of the provisions of this Ordinance shall be

Pursuant to the provision and penalties of Ch. 89, Acts 1967,

I hereby certify that the foregoing account is just and correct, that the amount claimed is legally due, after allowing all just credits, and that no part of the same has been paid.

V. E. Gerken

Date May 28, 1974

Title Clerk

PUBLISHER'S AFFIDAVIT

State of Indiana

ALLEN County ss:

Personally appeared before me, a notary public in and for said county and state, the undersigned, V. E. Gerken, who, being duly sworn, says that she is Clerk

NEWS-SENTINEL

DAILY

a newspaper of general circulation printed and published in the English language in the city of FORT WAYNE, INDIANA

in state and county aforesaid, and that the printed matter attached hereto is a true copy, which was duly published in said paper on May 2

time 8, the dates of publication being as follows:

May 18, 1974

May 25, 1974

Subscribed and sworn to before me this 28th day of May, 1974.

Notary Public

My commission expires March 11, 1978

Notice is hereby given that on the 14th day of May, 1974, the Common Council of the City of Fort Wayne, Indiana, in a Regular Session did pass the following Bill No. G-74-52-25, G-11-74 General Ordinance, to-wit:

BILL NO. G-74-52-25

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SECTION 3. Every person who knowingly engages or participates in, manages, produces, sponsors, presents or exhibits any obscene performance is guilty of a misdemeanor.

SECTION 4. Defenses. It shall be an affirmative defense to a prosecution under this Ordinance for the defendant to show: (a) that the act was done for legitimate scientific or educational purposes.

SECTION 5. Where the subject matter is offered for distribution to the public as stock in trade of a lawful business or activity, or as in the case of films is exhibited at a commercial theater showing regularly scheduled performances to the general public, no persons shall be arrested for a violation of any of the provisions of this Ordinance unless the arresting officer shall have first obtained an arrest warrant, and no property shall be seized as evidence unless a search warrant shall have first been obtained pursuant to the provisions of this Ordinance; Provided, however, that the quantity of matter seized shall encompass no more than is reasonable and necessary for the purpose of obtaining evidence.

SECTION 6. At any time after seizure, or the obtaining of evidence by purchase, and prior to arrest, the City defendant, owner, or other party in interest of any matter seized or purchased, may apply for and obtain a prompt adversary hearing for the purpose of obtaining a preliminary determination of obscenity. Said hearing for preliminary determination of obscenity shall be held promptly and without the intervention of a jury, said restriction applying only to the preliminary determination and in no way affecting the defendant's right to a jury trial. If evidence has been obtained by purchase, the court shall direct the clerk of the court to issue notice to the defendant informing the person of the availability of a prompt adversary hearing prior to the issuance of a warrant of arrest. If the court determines at said hearing that the material is obscene, the matter shall be held as evidence and a warrant of arrest may be issued for the arrest of the defendant. Provided, further, if the defendant, owner or other party in interest of any matter seized or purchased shall not apply for a prompt adversary hearing within five (5) days after the seizure occurs or within seven (7) days after notice is issued by the court, an arrest warrant may be issued for the arrest of the defendant. In the case of films or motion pictures, at any time after seizure and prior to trial or any adversary hearing for the purpose of obtaining a preliminary determination of obscenity, the defendant or owner of any matter seized may apply for and, upon a showing that other copies of the film or motion picture are not available to be exhibited, the court shall order that the applicant be permitted to copy the film or picture, at his own expense, so that showing can be continued pending a judicial determination of obscenity in an adversary hearing.

SECTION 7. Any person who violates any of the provisions of this Ordinance shall be guilty of a misdemeanor, and shall upon conviction, be fined in any amount not to exceed One Thousand Dollars (\$1,000.00).

(f) "Person" means any individual, partnership, firm, association, corporation or other legal entity.

(g) "Distribute" means to transfer possession of, whether with or without consideration.

(h) "Knowingly" means knowing or having good reason to know or having such constructive knowledge as would constitute knowing, the character of the matter or performance.

(i) "Owner" means any person who owns or has legal right to possession of any matter.

(j) "City" means City of Fort Wayne, Indiana.

SECTION 2. Every person who knowingly sends or causes to be sent, or brings or causes to be brought, into the City for sale or distribution, or in the City possesses, prepares, publishes or prints, with intent to distribute or to exhibit to another, or who offers to distribute, distributes, or exhibits to another any obscene matter is guilty of a misdemeanor.

SECTION 3. Every person who knowingly engages or participates in, manages, produces, sponsors, presents or exhibits any obscene performance is guilty of a misdemeanor.

SECTION 4. Defenses. It shall be an affirmative defense to a prosecution under this Ordinance for the defendant to show:

(a) That the act was done for legitimate scientific or educational purposes.

SECTION 5. Where the subject matter is entered for distribution to the public as stock in trade of a lawful business or activity, or as in the case of films is exhibited at a commercial theater showing regularly scheduled performances to the general public, no person shall be arrested for a violation of any of the provisions of this Ordinance unless the arresting officer shall have first obtained an arrest warrant, and no property shall be seized as evidence unless a search warrant shall have first been obtained pursuant to the provisions of this Ordinance. Provided, however, that the quantity of matter seized shall encompass no more than is reasonable and necessary for the purpose of obtaining evidence.

SECTION 6. At any time after seizure, or the obtaining of evidence by purchase, and prior to arrest, the City, defendant, owner, or other party in interest of any matter seized or purchased, may apply for and obtain a prompt adversary hearing for the purpose of obtaining a preliminary determination of obscenity. Said hearing for preliminary determination of obscenity shall be held promptly and without the intervention of a jury, said restriction applying only to the preliminary determination and in no way affecting the defendant's right to a jury trial, if evidence has been obtained by purchase. The court shall direct the clerk of the court to issue notice to the defendant informing the person of the availability of a prompt adversary hearing prior to the issuance of a warrant of arrest. If the court determines of said hearing that the material is obscene, the matter shall be held as evidence and a warrant of arrest may be issued for the arrest of the defendant. Provided, further, if the defendant, owner or other party in interest of any matter seized or purchased shall not apply for a prompt adversary hearing within five (5) days after the seizure occurs or within seven (7) days after notice is issued by the court, an arrest warrant may be issued for the arrest of the defendant. In the case of films or motion pictures, at any time after seizure and prior to trial or any adversary hearing for the purpose of obtaining a preliminary determination of obscenity, the defendant or owner of any matter seized may apply for and, upon a showing that other copies of the film or motion picture are not available to be exhibited, the court shall order that the applicant be permitted to copy the film or picture, at his own expense, so that showing can be continued pending a judicial determination of obscenity in an adversary hearing.

SECTION 7. Any person who violates any of the provisions of this Ordinance shall be guilty of a misdemeanor, and shall upon conviction, be fined in any amount not to exceed One Thousand Dollars (\$1,000.00) and may be imprisoned for any period not to exceed six (6) months.

SECTION 8. This Ordinance repeals General Ordinance No. G-97-74, dated April 9, 1974.

SECTION 9. If any provision or clause of this Ordinance, or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this Ordinance, and to this end the provisions of each section are declared to be severable.

SECTION 10. This Ordinance shall be in full force and effect from and after its passage, approval by the Mayor and legal publication thereof.

JOHN NUCKOLS, Councilman.
Read the third time in full and on motion by Nuckols, seconded by V. Schmidt, and duly adopted, placed on its passage.
PASSED by the following vote:

Ayes: Nine.

Burris, Hings, Kraus, Moses, Nuckols, D. Schmidt, V. Schmidt, Stier, Talarico.

Nays: None.

Dates: 5-14-74.

CHARLES W. WESTERMAN, City Clerk.
MELVIN G. HONECK, Deputy Clerk.
Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as General Ordinance No. G-11-74 on the 14th day of May, 1974.

ATTEST (SEAL)

Charles W. Westerman — City Clerk

Melvin G. Honeck — Deputy Clerk

Samuel J. Talarico, Presiding Officer.

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 15th day of May, 1974, at the hour of 10:00 o'clock A.M., E.S.T.

CHARLES W. WESTERMAN, City Clerk

MELVIN G. HONECK, Deputy Clerk

Approved and signed by me this 15th day of May, 1974, at the hour of 11:30 o'clock A.M., E.S.T.

IVAN A. LEBAROFF, Mayor

I, Charles W. Westerman, Clerk of the City of Fort Wayne, Indiana, do hereby certify that the above and foregoing is a full, true and complete copy of General Ordinance No. G-11-74 passed by the Common Council on the 14th day of May, 1974, and that said Ordinance was duly signed and approved by the Mayor on the 15th day of May, 1974 and now remains on file and on record in my office.

WITNESS my hand, and the official seal of the City of Fort Wayne, Indiana, this 15th day of May, 1974.

CHARLES W. WESTERMAN, City Clerk

MELVIN G. HONECK, Deputy Clerk

Common Council-City of Ft. Wayne
(Governmental Unit)

To: NEWS-SENTINEL Dr.

Allen

County, Ind.

FORT WAYNE, INDIANA

PUBLISHER'S CLAIM

LINE COUNT

Display Matter (Must not exceed two actual lines, neither of which shall total more than four solid lines of the type in which the body of the advertisement is set)
— number of equivalent lines

Head number of lines

Body number of lines

Tail number of lines

Total number of lines in notice

212

4

216

COMPUTATION OF CHARGES

216 lines, columns wide equals equivalent lines at .288¢
cents per line

62.21

Additional charge for notices containing rule or tabular work (50 per cent of above amount)

Charge for extra proofs of publication (50 cents for each proof in excess of two) (4)

2.00

TOTAL AMOUNT OF CLAIM

64.21

DATA FOR COMPUTING COST

Width of single column 11 ems

Size of type 5 1/2 point

Number of insertions 2

Size of quad upon which type is cast 5 1/2

Pursuant to the provision and penalties of Ch. 89, Acts 1967,

I hereby certify that the foregoing account is just and correct, that the amount claimed is legally due, after allowing all just credits, and that no part of the same has been paid.

Date May 28, 1974

Title Clerk

PUBLISHER'S AFFIDAVIT

State of Indiana

ALLEN County

Personally appeared before me, a notary public in and for said county and state, the undersigned, V. E. Gerken

that, She is Clerk who, being duly sworn, says

NEWS-SENTINEL

DAILY

a newspaper of general circulation printed and published in the English language in the city of FORT WAYNE, INDIANA

in state and county aforesaid, and that the printed matter attached hereto is a true copy, which was duly published in said paper for 2

time, the dates of publication being as follows:

May 18, 1974

May 25, 1974

Subscribed and sworn to before me this 28th day of May 1974.

Notary Public

My commission expires March 11, 1978

Notice is hereby given that on the 14th day of May, 1974, the Common Council of the City of Fort Wayne, Indiana, in a Regular Session, for order, now, and that the quantity of matter seized shall encompass all more than is reasonable and necessary for the purpose of obtaining evidence.

SECTION 6. At any time after seizure, or prior to arrest, the City, defendant, owner, or other party in interest of any matter seized or purchased, may apply for and obtain a prompt adversary hearing for the purpose of obtaining a preliminary determination of essentiality. Said hearing for pre-arrest determination of essentiality shall be held promptly and without the intervention of a jury, said restriction applying only to the preliminary determination and only in no way affecting the defendant's right to a jury trial. If evidence has been obtained by purchase, the court shall direct the defendant informing the person of the availability of a prompt adversary hearing prior to the issuance of a warrant of arrest. If the court determines at said hearing that the material is obscene, the matter shall be held as evidence and a warrant of arrest may be issued for the arrest of the defendant. Provided, further, if the defendant, owner or other party in interest of any matter seized or purchased shall not apply for a prompt adversary hearing within five (5) days after the seizure occurs or within seven (7) days after notice is issued, the time

VAN A. LEBAMOFF, Mayor
I, Charles W. Westerman, Clerk of the City of Fort Wayne, Indiana, do hereby certify that the above and foregoing is a full, true and complete copy of General Ordinance No. G-11-74 passed by the Common Council on the 14th day of May, 1974, and that said Ordinance was duly signed and approved by the Mayor on the 15th day of May, 1974 and now remains on file and on record in my office.

WITNESS my hand, and the official seal of the City of Fort Wayne, Indiana, this 15th day of May, 1974.

CHARLES W. WESTERMAN,
City Clerk.
MELVIN G. HONERK,
Deputy Clerk.